

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RECEIVED

JAN 29 2 25 PM '02

Postal Rate and Fee Changes, 2001)

Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL PRODUCTION OF INFORMATION
REQUESTED IN INTERROGATORY OCA/USPS-307
(January 29, 2002)

Pursuant to Rule 21 of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate ("OCA") hereby moves to compel the production of specific material as requested in OCA/USPS-307. The interrogatory was filed on December 14, 2001, but the Postal Service failed to respond for over a month until it filed objections to this interrogatory on January 16, 2002.¹ In accordance with Commission Rules 26(d) and 27(d), the interrogatory is set forth in full.

OCA/USPS-307. The following refers to the USPS response to OCA/USPS-299, dated December 10, 2001.

- (a) The Postal Service indicated its process of updating site-specific Express Mail network data to each POS One terminal including the fact that the NCR POS One system displays "a warning message for articles addressed to post office boxes that are scheduled for delivery over the weekend." When the "1-800-ASK-USPS" phones are answered and a customer asks for the delivery standards for First-Class, Priority and Express Mail, does the USPS Ask representative have information available such that they can give (1) customers "a warning message for articles addressed to post office boxes that are scheduled for delivery over the weekend;" and, (2) do USPS Ask representatives give customers the warning?
- (b) If your response to part "(a)1" of this interrogatory is other than affirmative, please explain why the USPS ASK representative does not have the information.

¹ "Objection of United States Postal Service to Interrogatory OCA/USPS-307," filed January 16, 2002 (hereinafter cited as "Objection"). On the same date, the Service filed a motion to accept its late filing.

- (c) If your response to part "(a)2" of this interrogatory is other than affirmative, please explain why the USPS Ask representative does not provide the customer with the courtesy warning.

Postal Service Objection

The Postal Service objects partly on the basis that the late date, in terms of partial settlement of the case, removes any obligation to comply with the Commission's discovery rules and on the purported ground that the interrogatory is not proper follow-up discovery

A. THE SERVICE SHOULD NOT BE ALLOWED TO USE ITS ADMITTED FAILURE TO RESPOND IN A TIMELY FASHION TO DEFEAT PROPER DISCOVERY

Implicitly in this objection and more directly elsewhere,² the Service contends that its discovery obligations should simply lapse in light of the pendency of settlement negotiations. Whatever may be the case as to new discovery, there are two situations in which enforcing discovery is absolutely essential to maintaining the integrity of the Commissions Rules. These situations are: (1) where the Service has already been directed to comply with discovery requests and has failed to comply;³ and (2) where the Service has inexcusably been extremely tardy in complying and now seeks to be rewarded for its tardiness by having the discovery request voided. This case presents the latter situation.

The Service was obligated to file its objection to this interrogatory by December 26, 2001. It failed to do so and simply failed to file anything at all until January 16,

² "Motion of the United States Postal Service for the Establishment of a Procedural Mechanism and Schedule Covering Further Proceedings in Light of Settlement" at 4-6, filed January 22, 2002.

³ That situation exists in this case. For one example, in POR No. R20001-1/21, filed December 18, 2001, the Presiding Officer ordered compliance with OCA/USPS-180 and 181. No compliance has

2002, over a month after the request was received. The Service made no attempt to confer with the OCA about the delay or even to notify the OCA. As excuse for its tardiness, the Service merely says that it unilaterally decided that the request was not a proper follow-up interrogatory and might open the door to further requests that the Service did not wish to answer. Implicitly, the Service admits that its intent, at least in part, was to forestall further legitimate follow-up simply by refusing to answer an interrogatory the Service admits it could have answered. Objection at 2-3.

It is not the province of the Postal Service to "rule" on what is proper follow-up and "bury" any questions that it does not wish to answer simply by refusing to answer them. Ruling on discovery issues is the responsibility of the Presiding Officer.

Here, the Service admits to an unexcused failure to respond to discovery in a timely fashion and then argues that its failure to comply should be rewarded by voiding whatever discovery requests it negligently or deliberately failed to answer.

B. THE INTERROGATORY IS PROPER FOLLOW-UP DISCOVERY

The OCA submits that the Commission need not consider whether the interrogatory is proper follow-up discovery. The Service failed to file remotely timely objection and offers no valid excuse for the failure. Accordingly, the motion for leave to file late objections should be denied and the Service should be directed to comply.

Alternatively, the Presiding Officer should enforce interrogatory 307 as a proper follow-up inquiry. The interrogatory was motivated by an unexpected response to interrogatory 299. The response to interrogatory 299 was filed on December 10, 2001.

occurred. OCA is attempting to discuss all such situations with Postal counsel before informing the Commission of noncompliance.

Interrogatory 307 was filed only four days later, on December 14, 2001, as a timely and proper follow-up interrogatory.⁴

Rules 26(a) and 27(a) allow follow-up inquiries "to clarify or elaborate" previous discovery inquiries. The Service's objection seeks to read the word "elaborate" out of the Rules so as to allow only for minor clarifications. That is not what the rule says or allows. Here, in response to interrogatory 299, the Postal Service informed the OCA for the first time that Postal Service NCR POS ONE terminals, used by Postal employees to provide information to customers in post offices, display "a warning message for articles addressed to post offices boxes that are scheduled for delivery over the weekend." Accordingly, OCA sought to determine (through follow-up interrogatory 307) whether a similar warning was available to "1-800-ASK-USPS" operators, who provide an alternative source of information to consumers via an "800" telephone number and, if not, why the operators and the customers were not given this information.

The Service deems this information important enough to warrant a special warning on its POS ONE terminals. Since the POS ONE terminals and the "800" number operators are alternative outlets for dissemination of information to sales representatives and consumers, it was entirely reasonable to inquire whether a previously undisclosed warning available on one system was available on the other system and, if not, why not. This was proper elaboration based on previously unknown information.

The Service makes no claim that this information was known to the OCA.

⁴ The discovery "cut-off" for this docket was December 10, 2001. See POR No. R2001-1/6, filed November 5, 2001.

Instead, the Service makes the absurd argument that the OCA could have speculated about possible warnings or policy information that the Service might possibly provide on any information outlet and should have served an initial wave of interrogatories reflecting each of these possibilities. While the Service has repeatedly objected to the extent of discovery in this docket, it now argues that parties have a duty to draft interrogatories on every imaginable hypothetical possibility or risk waiving their right to discovery. Initial wave discovery in future proceedings must expand exponentially if this is the proper interpretation of the Rules.

Moreover, the discovery sought here is unquestionably proper as seeking information "reasonably calculated to lead to [the discovery] of admissible evidence" as permitted by Rule 25. The Service itself thought the warning important enough to place on its POS ONE terminals. Whether it arranged for the information to be available to "800" number operators and consumers choosing to utilize that channel (and reasons for not doing so) bear directly on the truthfulness of Service performance claims and the adequacy of disclosures about failures or limitations of the services provided.⁵

⁵ The Service appears to admit that the "800" number operators do not have the information. Objection at 2. Apparently the Service objects to putting this admission in admissible form.

For the foregoing reasons, OCA asks that the Postal Service be directed to provide a complete response to interrogatory OCA/USPS-307.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frederick E. Dooley".

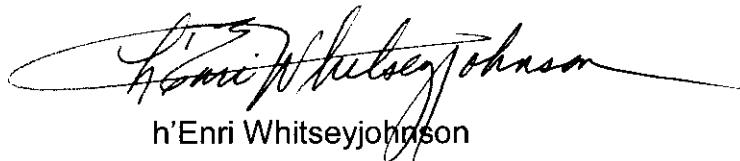
Frederick E. Dooley
Attorney

Shelley S. Dreifuss
Acting Director
Office of the Consumer Advocate

1333 H Street, N.W.
Washington, D.C. 20268-0001
(202) 789-6830; Fax (202) 789-6819

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Rule 12 of the rules of practice.

A handwritten signature in black ink, appearing to read "h'Enri Whitseyjohnson".
h'Enri Whitseyjohnson

Washington, D.C. 20268-0001
January 29, 2002